

SERVICE DATE - MARCH 19, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-855 (Sub-No. 1X)¹

A & R LINE, INC.—ABANDONMENT EXEMPTION—
IN CASS AND PULASKI COUNTIES, IN

IN THE MATTER OF AN OFFER OF FINANCIAL ASSISTANCE

Decided: March 18, 2004

By decision and notice of interim trail use (NITU) served on November 18, 2003, the Board, under 49 U.S.C. 10502, exempted from the prior approval requirements of 49 U.S.C. 10903, the abandonment by A & R Line, Inc. (A&R) of, and discontinuance of service by Toledo, Peoria & Western Railway Corporation (TP&W) over, a line of railroad known as the A&R line, extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.0W near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN, subject to environmental, trail use, public use, and employee protective conditions.

On November 28, 2003, Kokomo Grain Company (Kokomo) timely filed an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the line for \$525,000. In a decision served on December 3, 2003, the effective date of the exemption authorizing abandonment was postponed to permit the OFA process to proceed.

In a motion filed on December 23, 2003, A&R and TP&W (jointly, petitioners) indicate that pleadings that they have filed in this proceeding incorrectly described the subject line as a 15.9-mile line of railroad. According to petitioners, the subject line is actually 21 miles long, extending from milepost 0.0W² at Kenneth to milepost 21.0W at Winamac. The petitioners state that they became aware of the error when analyzing the OFA filed by Kokomo. In the motion, petitioners ask that the Board permit them to amend their pleadings to correct these errors. They also request that the Board revise its decisions to reflect the correct description of the line. A decision served on December 23, 2003, held the OFA process in abeyance while the Board considered the motion.

¹ Prior decisions in this proceeding also have embraced Toledo, Peoria & Western Railway Corporation—Discontinuance of Service Exemption—in Cass and Pulaski Counties, IN, STB Docket No. AB-847 (Sub-No. 2X).

² Petitioners state that this milepost also has been designated as milepost 5.1W, leading the petitioners to mistakenly refer to the length of the line as 15.9 miles rather than 21 miles.

By decision served March 5, 2004, the Board granted the motion to amend. The Board revised its decision granting the abandonment and discontinuance exemptions to correct the description of the subject line as a 21-mile rail line extending from milepost 0.0W at Kenneth to milepost 21.0W at Winamac. The remainder of the decision including the environmental³ and standard employee protective conditions that were imposed remained unchanged.

The Board's November 18, 2003 decision also imposed trail use and public use conditions that had been requested by the Indiana Trails Fund, Inc. (ITF) for the 15.9-mile line as originally described in the Board's decision. In its March 5, 2004 decision, the Board provided that ITF could file a revised request by March 15, 2004, for a public use condition and an interim trail use condition for the entire 21-mile line. And, on March 12, 2004, ITF filed its revised request for a trail use condition and a public use condition for the 21-mile line. By letter filed March 15, 2004, A&R stated that it agreed to negotiate interim trail use for the entire 21-mile line.

As noted, the effective date of the exemption authorizing abandonment was postponed to allow consideration of an OFA that was filed by Kokomo to purchase the 15.9-mile line as originally described in the Board's decision. The entire OFA process was then held in abeyance to consider the petitioners' motion to clarify the mileage by the exemption. To resume the OFA process, Kokomo was ordered to submit a new OFA for the 21-mile line, also by March 15, 2004. And, on that date, Kokomo timely filed its revised OFA under 49 U.S.C. 10904 and 49 CFR 1152.27 to purchase the 21-mile line for \$525,000.

OFA. An OFA to acquire a line for continued rail service need not be detailed, but an offeror must show that it is financially responsible and that the offer is reasonable. See Conrail Abandonments Under NERSA, 365 I.C.C. 472 (1981). Kokomo has submitted financial information, again showing that it has the financial resources to acquire and operate the line. Kokomo is thus found to be financially responsible.

Kokomo states that A&R recently provided it with an estimated valuation of the rail line in the amount of \$1,449,460, compared to A&R's November 15, 2003 estimate of \$895,027.48. According to Kokomo, A&R contends that the value of the rail line has increased by some 62 percent in the 4-month period since the initial OFA filing. Kokomo reaffirms that its offer is based on a statement in the petition for exemption indicating that the abandonment would enable

³ In a notice served and published on January 12, 2004 (69 FR 1780), the Board's Section of Environmental Analysis corrected the description of the line in the environmental assessment (EA) that it previously issued in this proceeding. SEA stated that it considered the impact that the abandonment and discontinuance would have between Kenneth and Wnamac, which covered the full 21 miles of the line and that, therefore, all other information in the EA remained unchanged.

A&R to sell or reuse \$525,000 worth of rails, ties, and other track materials. Consistent with 49 U.S.C. 10904(c) and 49 CFR 1152.27(c)(1)(ii)(c), Kokomo has explained the basis for the difference between its lower estimate for the line and A&R's estimated value for the line.

Kokomo has stated again that it intends to provide rail service over the line. Because Kokomo is financially responsible and has offered assistance, the effective date of the exemption authorizing abandonment will be postponed.

Any person filing a request to set terms and conditions must pay the requisite filing fee, set forth at 49 CFR 1002.2(f)(26), which currently is \$16,800. An original and 10 copies of the request should be submitted along with the fee, in an envelope bearing the docket number of this proceeding, along with the words "Attention: Request to Set Terms and Conditions" in the lower left hand corner.

Appeals to this decision are governed by 49 CFR 1011.2(a)(7). Any appeal must be filed within 10 days of the service date of this decision and will be heard by the entire Board.

Trail Use and Public Use. ITF has timely filed a revised request for a public use condition and an interim trail use condition for the entire 21-mile lines. ITF's filing is the same as its prior filing except that it has used the mileposts that correctly include the entire 21 miles for the length of the line. A&R has filed a letter agreeing to negotiate trail use for the 21-mile line. Because these filings merely confirm that the sought public use and trail use conditions were for the entire length of the line, which has now been determined to be 21 miles rather than 15.9 miles, and because the Board in its March 5, 2004 decision already revised its November 18, 2003 decision in which it imposed those conditions to reflect the correct mileage and mileposts, further Board action is unnecessary with regard to the public use and interim trail use conditions imposed in this proceeding.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The effective date of the exemption authorizing the abandonment is postponed in order to permit the OFA process under 49 U.S.C. 10904 and 49 CFR 1152.27 to proceed.
2. If A&R and Kokomo cannot agree on the purchase price, either party may request the Board to establish the terms and conditions of the purchase on or before April 14, 2004. If no agreement is reached and no request is submitted by that date, the Board will serve a decision vacating this decision and allowing the abandonment exemption to become effective.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary